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OFFICE OF PETITIONS

In re Application of :
Biscarini et al. : DECISION ON PETITION
Application No. 10/537,158 :
Filed: May 31, 2005 :
Atty Docket No. 40379/DOB/LP :

This is in response to the PETITION TO THE DIRECTOR, TO WITHDRAW HOLDING OF ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION (MPEP 711.03(c)A) filed March 21, 2008. Receipt of the status inquiry filed October 15, 2008 is acknowledged.

The petition is DISMISSED.

Any request for reconsideration pursuant to § 1.181 must be filed within **TWO (2) MONTHS** of the date of this decision in order to be considered timely. See 37 CFR §1.181(f). Extensions of time under §1.136(a) are not permitted.

The above-identified application became abandoned for failure to file a response to the NOTICE TO FILE CORRECTED APPLICATION PAPERS mailed October 24, 2007. This Office communication set a two month period for reply. No extensions of time under § 1.136(a) were permitted. No response was received; the application became abandoned effective December 25, 2007. A courtesy Notice of Abandonment was mailed on October 15, 2008.

In response, applicants filed the instant petition. The agent of record states that the Office letter mailed October 24, 2007 was never received by the agent of record. In support thereof, applicant submits the declaration of Mrs. Myriam Canonne. Applicant argues that the Office letter was not received by the agent of record's firm, since otherwise it would not have been necessary for Mrs. Canonne to obtain an on-line copy of such

Notice. Further, applicant supplies a copy of the December 24, 2007 page of the calendered note book of Mrs. Canonne, where the time limits of specific patent application prosecution dockets are indicated for which the agent of record actions were due on December 24, 2007. In addition, applicant submits a copy of the December 24, 2007 page of the calendered note book of the head of the general office, Mrs. Sara Modiano. Finally, applicant submits a copy of the journalistic public information sheet (with translation) to show that in Italy, in general and in particular in the October-November 2007 time period, frequent disruption of mail delivery occurred so that it is reasonable to assume that also the Office letter mailed October 24, 2007 went astray in the mail.

A review of the application file reveals no irregularities in the mailing of the Office action mailed October 24, 2007. Thus, there is a strong presumption that the correspondence was properly mailed to the applicants at the correspondence address of record. In the absence of demonstrated irregularities in mailing of this Notice, petitioner must submit evidence to overcome this presumption. The following showing is required:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for

reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

The practitioner has not submitted a sufficient showing. First, the agent of record supplies copies of calendered note book pages and a statement of the tasks performed by Mrs. Canonne with respect to the calendered note book entries. This statement does not make entirely clear that the system is reliable.

Second, the agent of record does not state as required that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. Practitioner's statement lacks such specificity. This is noteworthy as Mrs. Canonne notes that part of her task is to mark the time limit on the front page of the papers of the specific case. Moreover, practitioner has not explained why his statement should be accepted despite its inconsistency with the required showing for non-receipt.

Most importantly, practitioner has not supplied a copy of the master docket report required to make the showing. Specifically, practitioner has not submitted the master docket report showing where the non-received Office action would have been entered had it been received and docketed. Rather, practitioner submits the calendered note book pages. As stated above, the showing required requires that a copy of the master docket report showing all replies docketed for a date, in this instance, two months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action, unless no master docket exists. Absent sufficient explanation, submission of the master docket is required.

Moreover, if no such master docket exists, the practitioner should so state and provide other evidence such as, but not

limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. Again, the standard must be met that the docket record provided is where the Office action would have been entered had it been received.

Given the deficiencies in petitioner's showing, it is concluded that the required showing of non-receipt has not been met.

If applicants cannot provide persuasive evidence of non-receipt of the Office action, applicants may submit a petition to revive pursuant to § 1.137.

Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By fax: (571) 273-8300
 ATTN: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized flourish at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions